

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, November 19, 2008 – 9:00 a.m. – Room C450 State Capitol

**Members Present:**

Sen. Gregory S. Bell, Senate Chair  
Rep. Eric K. Hutchings, House Chair  
Sen. Peter C. Knudson  
Sen. Ross I. Romero  
Rep. Sheryl L. Allen  
Rep. Jim Bird  
Rep. Jackie Biskupski  
Rep. Lorie D. Fowlke  
Rep. Keith Grover  
Rep. Neil A. Hansen  
Rep. Christine A. Johnson  
Rep. Kay L. McIff  
Rep. R. Curt Webb  
Rep. Mark A. Wheatley

**Members Absent:**

Sen. Lyle W. Hillyard  
Rep. Kevin S. Garn  
Rep. Gregory H. Hughes

**Staff Present:**

Mr. Jerry D. Howe, Policy Analyst  
Ms. Esther Chelsea-McCarty, Associate General Counsel  
Ms. Amanda K. Majers, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Hutchings called the meeting to order at 9:13 a.m.

**MOTION:** Sen. Romero moved to approve the minutes of the September 17 and October 15, 2008 meetings. The motion passed unanimously, with Rep. Biskupski absent for the vote.

**2. Review of Statutorily Required Reports**

**A. Sex Offender Treatment**

Ms. Chris Mitchell, Utah Commission on Criminal and Juvenile Justice, and Mr. Michael Robinson, Utah Department of Corrections, discussed "Sex Offender Treatment in Utah: November 2008," which was distributed to the Committee prior to the meeting. The report consisted of descriptions of the following: 1) the initial assessment of sex offenders at the prison; 2) assessment procedures; 3) basic considerations; 4) assessment criteria; 5) sex offender treatment statistics; 6) sex offender treatment expenditures; 7) growth in the sex offender population; 8) sex offender legal status by degree; and 9) sex offender treatment and recidivism. Ms. Mitchell and Mr. Robinson answered questions from the Committee concerning their report.

**3. Presumptive Personal Representative - Report**

Sen. Bell described the background and inception of the Presumptive Personal Representative statute to the Committee and stated that a more complete report will be given in the 2009 interim, once more data has been gathered.

**4. Case Management Program - Sunset Review**

Mr. Ray Wall, Administrative Office of the Courts, distributed and discussed "Sunset Review Case Management Program." Mr. Wall explained the Case Management Program's background and reviewed

its accomplishments. He stated that the program lost its funding due to budget reductions and it will end December 31, 2008. Mr. Wall recommended that the Legislature allow the Case Management Program statute to sunset.

**MOTION:** Rep. McIff moved to allow the sunset provision of the Case Management Program statute, §78A-2-109, to take effect. The motion passed unanimously, with Rep. Allen, Rep. Bird, Rep. Hansen, and Rep. Hutchings absent for the vote.

## **5. Wrongful Death Amendments**

Sen. Scott D. McCoy discussed 2009 General Session draft legislation, "Wrongful Death Amendments," which was distributed to the Committee prior to the meeting. Sen. McCoy explained that the language "mutually supportive and dependent relationship" already exists in the Utah Code, and this draft legislation uses that language to expand the definition of an heir in a wrongful death suit. He also explained changes that were made to the draft legislation from suggestions that the Committee made during its October interim meeting.

Committee discussion followed.

Mr. Steven Graham, Standard of Liberty, spoke in opposition to the draft legislation.

Ms. Karen Merkley, United Families International, spoke in opposition to the draft legislation.

Sen. McCoy explained that a portion of Ms. Merkley's testimony concerned language that is not in the current draft legislation and would acquiesce to including that language.

Ms. Merkley stated that she would not require the addition of that language to the draft legislation.

Mr. Will Carlson, Equality Utah, spoke in support of the draft legislation.

Ms. Gayle Ruzicka, Utah Eagle Forum, spoke in opposition to the draft legislation.

Ms. Debra Poulsen, President, United Women's Forum, spoke in opposition to the draft legislation.

Ms. Valerie Mills, President, Citizens for Families, spoke in opposition to the draft legislation.

Rep. Biskupski raised a point of order to close the public comment period.

Rep. Johnson stated that the draft legislation is a fair and balanced piece of legislation and spoke in favor of the draft legislation. She also stated that the draft legislation is consistent with the constitution and does not offer anything remotely near the legal equivalent of marriage for nontraditional families.

Rep. Allen asked Sen. McCoy to clarify what language in a previous draft of the legislation was being referred to in previous testimony and the effect it would have if it were added to the draft legislation.

Sen. McCoy explained the language in the previous draft and reiterated his willingness to add that language to the current draft legislation.

Ms. Chelsea-McCarty read the language from a previous draft of the legislation.

Rep. Fowlke stated that she will not vote for the draft legislation because her constituents are not in favor of the draft legislation.

Rep. Hansen stated that there are many different situations where mutually supportive and dependent relationships exist and those people should be able to have the same benefits that exist for married couples. He stated his support for the draft legislation because it effects individual rights.

Rep. Biskupski stated that she realizes there is concern about the draft legislation's effect on marriage, but she stated that the draft legislation was written with that in mind and clearly attempts to not affect the state's constitution. She stated her support for the draft legislation.

Rep. McIff stated that this is not a debate about marriage but one about dependents being able to collect wrongful death compensation. He commented that this draft legislation is worthy of open debate on the floor of the Legislature during general session.

Sen. Knudson asked Sen. McCoy if he intends to bring the draft legislation to the floor of the Senate, during general session, even if it does not receive the Committee's approval.

Sen. McCoy replied that he intends to continue to advance the draft legislation during the general session if he receives feedback from his colleagues that the conversation concerning "Wrongful Death Amendments" should continue.

Sen. Romero indicated his support for the draft legislation because it has high standards that would have to be met by the court for a wrongful death action to move forward.

Chair Bell stated that politics often crowd out the language of legislation. He commented that so long as the Legislature does not undermine the traditional state of marriage it can recognize that there are other relationships that are mutually supportive. He stated his support for the draft legislation because it does nothing to undermine traditional marriage and does not protect sexual orientation as a class.

**MOTION:** Rep. Johnson moved to adopt 2009 General Session draft legislation, "Wrongful Death Amendments" as a committee bill.

**SUBSTITUTE MOTION:** Rep. Allen moved to add the language read by Ms. Chelsea-McCarty, which was in a previous draft of the legislation, to 2009 General Session draft legislation, "Wrongful Death Amendments" and with that amendment adopt it as a committee bill. The motion passed with Rep. Bird, Rep. Fowlke, Rep. Grover, and Rep. Webb voting in opposition.

## **6. Violation of Protective Order**

Sen. Scott D. McCoy distributed and discussed 2009 General Session draft legislation, "Violation of Protective Order."

Rep. McIff discussed the implications of the draft legislation as they pertain to the court system and explained the changes, which he suggested at the Committee's October meeting, that were made to the draft legislation.

**MOTION:** Rep. Fowlke moved to change line 91 of the draft legislation to delete "at any time" and to add "after one year following its issuance" after the language that states the court may amend or dismiss a protective order. The motion passed unanimously with Rep. Biskupski, Rep. Hansen, Rep. Johnson, and Rep. Webb absent for the vote.

**MOTION:** Rep. McIff moved to change line 121 after the word "party" by inserting "in a motion under Subsection (2)" and to strike on line 124 the word "either" and insert the word "other." The motion passed unanimously with Rep. Biskupski, Rep. Hansen, Rep. Johnson, and Rep. Webb absent for the vote.

**MOTION:** Rep. McIff moved to change line 112 to strike the first word "the" and substitute the word "no" then strike "no longer" and substitute "continues to," to change on line 112 the second "the" to "a," and to renumber Subsection (2)(b) to (2)(a)(i) and 2(c) to (2)(a)(ii) and 2(d) becomes (2)(b). The motion failed with Rep. Hutchings, Rep. Allen, Rep. Bird, Rep. Grover, Rep. Hansen, Rep. McIff, and Rep. Wheatley voting in favor. Sen. Bell and Rep. Biskupski were absent for the vote.

Mr. Stuart Ralphs, Legal Aid Society of Salt Lake, spoke on behalf of the Utah Domestic Violence Council in opposition to the draft legislation.

Ms. Sue Carey, Utah PTA, Family Life Commissioner, recommended that on line 115 the "or" be stricken so that all conditions must be met to protect victims' rights.

The Committee returned to Agenda Item 2. Review of Statutorily Required Reports to discuss item B. DUI Report.

Ms. Anna Kay Waddoups, Chairman, DUI Committee, and Ms. Mary Lou Emerson, Director, Utah Substance Abuse and Anti-Violence Coordinating Council, discussed "Sixth Annual DUI Report to the Utah Legislature: Executive Summary," which was distributed to the Committee prior to the meeting. They also distributed and discussed "Sixth Annual DUI Report to the Utah Legislature" and "DUI-Related Crashes, Injuries and Fatalities."

## **7. Self-Help Center Pilot Program - Report**

Ms. Mary Jane Ciccarello, Self-Help Center attorney, Administrative Office of the Courts, discussed "The Self-Help Center Pilot Project of the Utah State Courts: November 2008," which was distributed to the Committee prior to the meeting.

## **8. Other Items / Adjourn**

Chair Hutchings adjourned the meeting at 12:08 p.m.